

# Submission on the Births, Deaths, Marriages, and Relationships (Preventing Name Change by Child Sex Offenders) Amendment Bill

To the Social Services Select Committee

**This submission is from:**

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I am writing in favour of the proposed Births, Deaths, Marriages, and Relationships (Preventing Name Change by Child Sex Offenders) Amendment Bill.

I do not wish to be heard on this submission.

## 1. Introduction

I am making this submission in support of the proposed amendment. I believe that Child Sex Offenders should not be allowed to legally change their name(s). It is glaringly obvious to me that such people wishing to change their name are not doing so because they wish to express themselves, but to hide or conceal their past criminal history. Allowing such offenders to legally change their name poses an unnecessary risk to our children and this risk should be mitigated if we have the means. This amendment provides that means. I have read many of the arguments against this amendment and I believe none of these arguments (even cumulatively) are strong enough to allow this loophole to continue for the benefit of child sex offenders.

## 2. Purpose

*The aim of this Bill is to amend the Births, Deaths, Marriages, and Relationships Registration Act 1995 (the Act) to prevent convicted child sex offenders from legally changing their names.*

No one disputes the fact that this amendment serves an important purpose. The Attorney General, Labour Party and Green Party who all oppose the Bill still admit that the intent of the Bill, which is to protect our children from abuse, is worthy enough to be acted upon. Their main contentions are the argued civil rights imposition as well as the effectiveness of the proposed amendment. On balance both of these arguments fail to provide adequate justification for not enacting this Bill.

### 3. New Zealand Bill of Rights Act 1990

The Attorney-General report on this Amendment Bill opposes it based on the following premise:

*“Mr Finlayson says the proposed permanent ban on child sex offenders registering a name change limits New Zealanders' right to freedom of expression under section 14 of the NZBORA and that limitation cannot be demonstrably justified in a free and democratic society.”* (New Zealand Law Society, December 2015).

This is a gross error in judgement by the Attorney-General. The fact that he doesn't think that such an obvious loophole in our legislation should be not be fixed immediately to protect our children makes me very concerned.

The whole context of Freedom of Expression rights is not appropriate when it comes to talking about convicted criminals trying to change their name. Labelling a legal name change as freedom of expression in the case of child sex offenders is a dangerous misconception.

#### 3.1. Are Offender's Freedom of Expression Rights Really Impinged?

Many agree that preventing a legal name change does not actually prevent anyone from changing their name. Thereby rights to freedom of expression are not limited. Even the Attorney-General, who opposes this amendment, admits that this is the case:

The Attorney-General states: *“the Bill does not prevent, or only partially prevents, a ‘child sex offender’ from changing their name. At common law, a person can lawfully use a new name without registering it, so long as the new name is not used for fraudulent or improper purposes. The new identity is established simply by using the new name and by repute, and the change comes into effect when the person starts using the name. Similarly, a person is not legally obliged to give their ‘registered’ name, address, or other information unless there are statutory requirements specifying otherwise.”* (New Zealand Law Society, December 2015)

The Attorney-General makes a solid point. People use nicknames and pseudonyms all the time. Anyone is free to express themselves and use whatever name they like. Take for example the guitarist known as Slash from Guns 'n' Roses. One day he decided to be known as Slash. He liked the name and started using it. Literally anyone can do this as a way to express themselves. People close to Slash will know him also as Saul Hudson. Whether Saul Hudson is his legal name or not some people will still know him as Saul Hudson. A piece of paper won't change the fact that some people still know him as Saul Hudson.

#### 3.2. Freedom of Expression or Something Else?

I think it is ridiculous that everyone is overlooking the obvious fact (elephant in the room) that the main reason child sex offenders would want to change their name is so they can conceal their true identity. This point is explained very clearly here;

**JONATHAN YOUNG (National—New Plymouth):** *“But when people change their names—for example, if a company that owes a lot of creditors money winds up and changes its name, we say that that is wrong because it is seeking to elude justice. What this bill is about is not about stopping creative freedom, but stopping people escaping justice or escaping what would be considered to be a reasonable surveillance by a society in the protection of the most vulnerable”.* (Hansard Parliamentary Debates, September 2015)

Why should our worst offenders be given a clean slate and chance to remain anonymous from their past? I'm sure that their victims would love to have the chance to start over, but unfortunately this will never happen for them. Giving convicted child sex offenders a new identity will make it easier for

them to gain access to children and disassociate themselves from their past. This is a privilege they should not be entitled to and has nothing to do with freedom of expression.

It is obvious the current loophole in the legislation, which this Bill is attempting to fix, provides a mechanism making it easier for these offenders to reoffend. Do we really want a system which helps perpetrate the sexual abuse of our children by criminals who have already been identified as paedophiles?

This train of thought leads to the next question which is; why would a convicted child sex offender want to change their name legally? There are two possible reasons. Both of them described here by the Attorney-General (s26):

1. *“...a formal name change may assist in their rehabilitation and reintegration back into the community...”*
2. *“The Bill assumes child sex offenders will exploit existing mechanisms for changing registered names for nefarious purposes.”*

The first point is moot since there is no evidence paedophiles can actually be rehabilitated, let alone be reintegrated into our communities under a new legal alias. Secondly do we think any offenders at all will exploit this glaringly large loophole for nefarious purposes? You bet your arse we do! To place the decision regarding the safety of our children in the hands of convicted sexual predators is nonsensical.

I have clearly argued the case why I believe this Amendment Bill does not contravene the New Zealand Bill of Rights. However, if you're still not convinced, remember that the removal of rights and civil liberties is not unprecedented;

**IAN McKELVIE (National—Rangitikei):** *“Changing one’s name is no doubt a freedom that most deserve. However, everyone has a responsibility to their fellow humans and to their neighbours. In some cases abuse by these people, and abuse of that freedom, should lead to some rights being withdrawn. I think that there is often evidence that we can make a very strong case for some rights being withdrawn from offenders, particularly offenders of this nature.”* (Hansard Parliamentary Debates, September 2015)

## Effectiveness / Other Legislation

The other main argument against this Amendment Bill is that it is either ineffectual or that there is other legislation which may already have provision for such protections for our children. Specifically, the proposed Child Protection (Child Sex Offender Register) Bill, and to a lesser degree mechanisms such as Extended Supervision Orders. For example;

The Attorney-General (November 2015) states: *“I consider the prohibition on child sex offenders changing their registered name will have a minimal impact on the ability for a child sex offender to use other names.”*

**ADRIAN RURAWHE (Labour—Te Tai Hauāuru):** *“...there are other measures already in place and there are measures—which, I have to acknowledge, the Government is currently pursuing through legislation—that would adequately take care of the situation that this bill purports to be able to deliver on.”* (Hansard Parliamentary Debates, September 2015)

**DAVID CLENDON (Green):** *“Again, the legislation might prevent somebody from legally changing their name, but it would do nothing to stop them using aliases or other forms of false identity that would enable them to avoid and evade any controls on their behaviour.”* (Hansard Parliamentary Debates, September 2015)

Saying you believe this Amendment Bill will not be effective enough to warrant consideration is careless and is also contradicts many of the same antagonist's previous arguments that such legislation *would* have an effect on offender's rights. Will it have an effect or not? Make up your mind. Speculating the level of effectiveness or ineffectiveness of the legislation to suit your argument when we are talking about the safety of our children is reckless and irresponsible. Even if the effect of this legislation was very miniscule and prevented only one case of child abuse, would this not be worthy enough? What is an acceptable number?

Furthermore, relying on the implementation of the Child Protection Bill or other current legislation and mechanisms is lazy law-making. None of these mechanisms directly address the issue in question. The safety of our children will be less rigid if this loophole is not plugged. The Name Change Amendment Bill will complement the proposed Child Protection Bill. Both are separate legislation, addressing different aspects but with the same intent and purpose – to protect our kids.

It is important to understand what you can and cannot affect with legislation. Ian McKelvie MP sums up this point nicely here pointing out it the responsibility of law makers to do whatever they can to protect our children;

**IAN McKELVIE (National—Rangitikei):** *“I accept the fact that you cannot stop someone from changing their name by passing some legislation, but you can certainly make it illegal to do so by passing some legislation. I think that that is really important for this Parliament to consider as it goes through this process.”* (Hansard Parliamentary Debates, September 2015)

## Prevent Reoffending

Some of our Members of Parliament have made some good points regarding the proposed amendment and its effect on reoffending. My comments below expand these further and offer further insight.

**Hon ANNE TOLLEY (Minister for Social Development):** *“...in 2014, 294 child sex offenders were released from prison back into the community. The majority of these offenders will have no ongoing contact with justice-sector agencies after they complete their sentence or orders even though their risk of reoffending may be high.”* (Hansard Parliamentary Debates, September 2015)

Hundreds of child sex offenders are released back into our communities every year. Recidivism rates are high for these offenders and there is currently no way to successfully help or treat them. All we can do is *‘manage’* the risk and then do damage control when they reoffend and ruin yet another child’s life. Giving them the chance to change their name increases the risk *unnecessarily* to the community and our children.

**TODD BARCLAY (National—Clutha-Southland):** *“What we need to be focused on is how we prevent these people from falling into this position of reoffending. Part of it is by preventing them from changing their names”.* (Hansard Parliamentary Debates, December 2015)

Todd Barclay makes the point here that allowing offenders to change their name makes it easier for them to reoffend. I agree and propose to expand on the reasoning behind this statement by explaining how exactly this Bill will affect reoffending.

By continuing to allow offenders to change their name it lowers the deterrent factor and provides them with an *out* if they do get caught. Their odds of offending and getting away with it are already pretty good as only one person is successfully prosecuted for every one hundred sexual offences committed (Sensible Sentencing Trust Submission). Providing offenders with an additional loophole tips the balancing act in their head further towards committing the act. Critics may say such effects will only be marginal, however with thousands of child sexual abuse cases every year, the numbers will soon add up.

So, I believe what Todd Barclay is saying, is that if an offender knows they are stuck with their name they won’t be affected by the factors described above. They will have to accept that they will have to keep their name and not be offered another avenue in which to support their possible further criminal activities. When it comes to child sex offenders, recidivism *is* real and it *is* going to happen. We have to accept that. The question is whether we have legislation to protect our children or legislation that supports the reoffending.

Additionally, not previously discussed in relation to this Bill, is the fact that since the proposal of this Bill has brought this issue into the public domain, we have now highlighted the fact that these criminals *can* change their name. Basically we’ve advertised it publicly to everyone. If we don’t now remove this loophole for them, incidents of name changes may increase, not just for child sex offenders, but more criminals now know this is an option available to them. The unintended fallout is impossible to know, but could be very bad. It is imperative that action is taken to protect our most precious citizens.

Finally on reoffending, the question that needs to be asked is; Will continuing to allow convicted child sex offenders to change their name make it more likely for them to gain access to children? It’s difficult to answer NO to this question. However, even if it *was* a 99% NO and a 1% YES (which it isn’t), this 1% YES is still the most conservative option and more worthy of going ahead when it comes to the safety of our children from sexual predators.

## Scope of Term Child Sex Offender

*It references section 107B of the Parole Act, which includes a large number of offences, including violent offences and murder—a whole host of things—but it also deals with indecent assault.*

While not opposed to, I do agree with the Attorney-General that the scope of 'Child Sex Offender' is too broad for the purpose proposed. This technicality should be addressed by the select committee to come up with a better definition or criteria for the term 'Child Sex Offender'.

## Conclusion

The benefits of this legislation are clear. Even a child can understand the rationale for not allowing criminals to change their name. The arguments against the proposed Amendment, which are flimsy at best and at worse careless and irresponsible, are not sufficient to be weighed against even one case of child sexual abuse. Let alone the hundreds and thousands of cases the closing of this loophole will prevent in the future.

It is common sense that tells us that allowing convicted criminals to change their name is a bad idea. To make the excuse that they may be changing their names as a way to express themselves is simply folly. How did we get to a state where we even have to argue for such things? It saddens me greatly that I have to make justifications for legislation which provides such an obvious benefit. Offender's rights should never take precedent over the rights of victims and law abiding citizens. Hopefully our law makers will start to talk more about victim's rights and less about offender's rights in the future. But if they don't, I'll always try to remind them.

Thank you for taking the time to read my submission.

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